

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014080277

ORDER DENYING MOTION FOR
STAY PUT

On August 4, 2014, Parent on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing naming the Los Angeles Unified School District as respondent. Also on August 4, 2014, Student filed a motion for stay put. On August 12, 2014, LAUSD filed an opposition.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den.

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

(1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].) Stay put entitles the student to receive a program that is as closely as possible replicates the program which existed at the time the dispute arose taking into account changed circumstances. (*Van Scoy v. San Luis Coastal Unified School District* (9th Cir.2005) 353 F.Supp.2d 1083, 1086.)

DISCUSSION

In his motion, Student requests an order mandating that LAUSD continue his placement in the Intensive Comprehensive Autism Program (ICAP) at the Utah Elementary School, which Student attended during school year 2013-2014 pursuant to the last agreed IEP.

LAUSD contends that the stay put placement should be in the Preschool Comprehensive Program (PSC) as this program replaced the ICAP, which had been discontinued. LAUSD submitted a declaration by Karen Krische, a program specialist in the Early Childhood Department of the Special Education Division of LAUSD. Ms. Krische declared that LAUSD restructured preschool autism programs for the 2014-2015 school year. As part of this restructure, the ICAP was discontinued and replaced by PSC. Both programs have 10 students per class, a two-to-one student to staff ratio, and the same amount of instructional time. The PSC class staff includes a special education teacher, a special education assistant, a speech and language pathologist assistant, and a behavior intervention specialist. Additionally, the ICAP class at Utah Elementary was replaced by a PSC class.

Placement in the PSC class at Utah Elementary closely replicates the closed ICAP and constitutes the stay put placement in light of the changed circumstances.

ORDER

Student's motion for stay put is DENIED.

DATE: August 11, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings